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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA  
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13 RONALD NEAL JOSEPH, SR., )  
14 et al. )  
15 Plaintiffs, ) 2:09-cv-00966-HDM-LRL  
16 vs. )  
17 LAS VEGAS METROPOLITAN POLICE )  
18 DEPARTMENT, et al. )  
19 Defendants. )  
20

ORDER

21 Before the court is plaintiffs' motion to strike (Docket No.  
22 86). Defendants have responded (Docket No. 92) and plaintiffs have  
23 replied (Docket No. 97). For the following reasons the court hereby  
24 DENIES in part and GRANTS in part plaintiffs' motion to strike  
(Docket No. 86).

25 Plaintiffs move the court to strike the affidavits of John  
26 Scott Weber (Docket No. 73 Ex. 6), Randy Milmeister (Docket No. 73

1 Ex. 7), Sheila Rochelle White (Docket No. 73 Ex. 5), and Robert  
2 Gruzdis (Docket No. 73 Ex. 8) pursuant to Federal Rules of Civil  
3 Procedure 26(b)(3) and 37(c)(1) arguing the affidavits were not  
4 disclosed to plaintiffs. Plaintiffs also move the court to strike  
5 decedent Ronald Neal Joseph, Jr.'s criminal history report (Docket  
6 No. 73 Ex. 2) and the Las Vegas Metropolitan Police Department's  
7 Use of Excessive Force Investigation - Administrative Report  
8 (Docket No. 73 Ex. 11) to the extent that these documents are not  
9 based on personal knowledge and are irrelevant to the claims and  
10 defenses asserted in this case.

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12 **I. Affidavits (Docket No. 73 Exs. 5-8)**

13 The Federal Rules of Civil Procedure do not require a party  
14 who has disclosed potential witnesses to reveal the declarations  
15 signed by said witnesses for use in an impending summary judgment  
16 motion. See *Intel Corp v. Via Technologies*, 204 F.R.D. 450, 451-2  
17 (N.D. Cal. 2001); Fed. R. Civ. P. 26(a)(1)(B). Such declarations  
18 are considered work product up until the moment they are filed. *Id.*  
19 In addition, there is no bar to previewing testimony in a written  
20 form convenient to the court for the purpose of isolating material  
21 fact issues. *Id.* Finally, when fact witnesses are disclosed, all  
22 parties are on notice that the disclosing side may have interviewed  
23 the witnesses and may have obtained statements. *Id.*

24 Plaintiffs were aware of the testimony of Weber, Milmeister,  
25 White, and Gruzdis because plaintiffs listened to the witnesses'  
26 testimony at the Coroner's Inquest and possess their voluntary

1 statements taken by the Las Vegas Metropolitan Police Department  
2 through discovery. Defendants also identified these witnesses in  
3 their initial disclosure statement, which was sent to plaintiffs on  
4 April 8, 2010. (See Docket No. 92 Ex. 1) On August 18, 2010,  
5 defendants served by certified mail the deposition notices for each  
6 of these witnesses on plaintiffs (who marked the notices received  
7 on August 20, 2010). (See Docket No. 86 Ex. 1) Plaintiffs then  
8 brought a motion to quash those depositions. (Docket Nos. 31, 32,  
9 33) On September 7, 2010, at a hearing before this court on  
10 plaintiffs' motion to quash, the parties stipulated that the  
11 witnesses would not be deposed the week of September 7, 2010, but  
12 instead would sign affidavits. The court also allowed plaintiffs  
13 to notice the depositions of the witnesses at a later date. (See  
14 Docket No. 35) No depositions were ever taken.

15 The witnesses (Weber, Milmeister, White, and Gruzdis) were  
16 disclosed to plaintiffs over a year ago. Plaintiffs elected not to  
17 depose them. Accordingly, plaintiffs' motion to strike the  
18 affidavits of John Scott Weber (Docket No. 73 Ex. 6), Randy  
19 Milmeister (Docket No. 73 Ex. 7), Sheila Rochelle White (Docket No.  
20 73 Ex. 5), and Robert Gruzdis (Docket No. 73 Ex. 8) is hereby  
21 DENIED. Plaintiffs shall have fifteen (15) days from the date of  
22 this order in which to respond to the affidavits should plaintiffs  
23 elect to do so.

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25 **II. Decedent's criminal record (Docket No. 73 Ex. 2)**

26 Plaintiffs object that defendants' Exhibit 2 to the motion for

1 summary judgment (Docket No. 73), which is the decedent Ronald Neal  
2 Joseph, Jr.'s criminal history report from Lake Charles, Louisiana,  
3 is not relevant and inadmissible under Federal Rules of Evidence  
4 402 and 404. Defendants argue that the decedent's criminal history  
5 report is a public record, falls under the business record  
6 exemption to the hearsay rule, and is relevant to impeach testimony  
7 by plaintiffs regarding the decedent's criminal history. However,  
8 defendants also concede that the decedent's criminal history is not  
9 relevant to Officer Bradshaw's shooting of the decedent and its  
10 exclusion will not affect the summary judgment motion.

11 The court finds that the decedent's criminal history report  
12 (Docket No. 73 Ex. 2) is not relevant to the issues presented in  
13 defendants' motion for summary judgment. Accordingly, plaintiffs'  
14 motion to strike Exhibit 2 is hereby GRANTED.

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16 **III. LVMPD's Use of Force Investigation - Administrative Report**  
17 **(Docket No. 73 Ex. 11)**

18 Plaintiffs argue that the Las Vegas Metropolitan Police  
19 Department's Use of Force Investigation - Administrative Report  
20 (Docket No. 73 Ex. 11) is hearsay and inadmissible under Federal  
21 Rule of Evidence 801. Defendants argue that the report is not  
22 offered for the truth of the matter asserted, but is offered to  
23 show that the Las Vegas Metropolitan Police Department conducts  
24 thorough investigations of its officers when they are involved in  
25 shooting incidents and the report is necessary to counter  
26 plaintiffs' *Monell* claim.

10 DATED this 10th day of June 2011.

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